

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WALTER BURNLEY,

Defendant.

ORDER

06-cr-141-bbc
14-cv-451-bbc

Defendant Walter Burnley has filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that his 2007 conviction for bank robbery can no longer stand in light of Descamps v. United States, 133 S. Ct. 2276 (2013). His motion must be dismissed for lack of jurisdiction, because he filed a § 2255 motion in 2009, which was denied in an order entered on December 18, 2009. Dkt. #12. Under 28 U.S.C. § 2255(h), he cannot file a second motion unless he obtains certification for filing from a panel of the Court of Appeals for the Seventh Circuit. Until he does so, this court has no jurisdiction to consider any motion he might file.

It is probably unnecessary to consider the question of issuing a certificate of appealability. To complete the record, however, I find under Rule 11 of the Rules Governing Section 2255 Proceedings, that defendant has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282

(2004), so no certificate will issue.

ORDER

IT IS ORDERED that defendant Walter Burnley's motion for post conviction relief under 28 U.S.C. § 2255 is DENIED for lack of jurisdiction. No certificate of appealability shall issue.

Entered this 20th day of June, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge